

Senate Bill 591

By: Senators Fort of the 39th, Shafer of the 48th, Meyer von Bremen of the 12th, Tate of the 38th and Henson of the 41st

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, so as to provide a short title; to provide a permanent, tangible paper record as the official ballot of votes recorded for each voter; to require that all direct recording electronic voting systems produce such paper evidence as the official ballot; to provide that each elector shall have the opportunity to verify and affirm that the official ballot has accurately recorded his or her intent before casting the ballot for counting; to restore public ballot counting procedures for all voting systems in Georgia; to require that tabulations of said paper ballots are performed at the precinct by manual counting in full view of the general public; to specify that said paper ballots are exclusively recognized as the official ballot of record for purposes of counting, auditing, and recounting the vote and for election challenge proceedings; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Vote Count Protection Act."

SECTION 2.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, is amended by striking paragraph (1) of Code Section 21-2-2, relating to definitions and inserting in lieu thereof a new paragraph (1) to read as follows:

"(1) 'Ballot' means 'official ballot' or 'paper ballot' ~~and shall include the instrument, whether paper, mechanical, or electronic,~~ by which an elector verifies and casts his or her ~~vote~~ votes and establishes a tangible official record of voter intent that exists externally from any voting system equipment, software, or database."

SECTION 3.

Said chapter is further amended by striking subsection (f) of Code Section 21-2-324, relating to examination and approval of voting machines by Secretary of State, and inserting in lieu thereof a new subsection (f) to read as follows:

"(f) When a ~~machine~~ voting system has been so approved, ~~no improvement or any change that does not impair its accuracy, efficiency, or capacity to the voting machine or its software~~ shall render necessary a reexamination or reapproval of ~~the machine or of its kind~~ each such voting system."

SECTION 4.

Said chapter is further amended by striking paragraphs (7), (8), and (9) of Code Section 21-2-379.1, relating to requirements for use of electronic recording voting systems, and inserting in lieu thereof new paragraphs (7), (8), and (9) to read as follows:

"(7) It shall ~~be constructed of material of good quality in a neat and workmanlike manner~~ produce a permanent paper record as the official ballot containing a unique ballot number; each vote cast for each candidate, question, or other initiative on the ballot; and any additional information required to designate such record as the official record for count, audit, recount under Code Section 21-2-495, or any election challenge under Article 13 of this chapter involving a primary or election in which such system is used;

(8) It shall, ~~when properly operated, record correctly and accurately every vote cast~~ provide the elector with an opportunity to review the printed ballot before such ballot is accepted as final and official and to make changes or corrections to the printed ballot as provided in subsection (b) of Code Section 21-2-379.10;

(9) It ~~shall be constructed of good quality in a neat and workmanlike manner and~~ shall be so constructed that an elector may readily learn the method of operating it; and".

SECTION 5.

Said chapter is further amended by striking Code Section 21-2-379.2, relating to review of manufacturer's electronic recording voting system by Secretary of State, and inserting in lieu thereof a new Code Section 21-2-379.2 to read as follows:

"21-2-379.2.

(a) ~~Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any direct electronic recording voting system may request the Secretary of State to examine the system. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any such system previously examined and approved by him or her. Before any such examination or reexamination, the person,~~

1 ~~persons, or organization requesting such examination or reexamination shall pay to the~~
2 ~~Secretary of State the reasonable expenses of such examination. The Secretary of State~~
3 ~~may, at any time, in his or her discretion, reexamine any such system. All existing voting~~
4 ~~machine software used by the State of Georgia and any software of electronic voting~~
5 ~~machines examined by the Secretary of State or representatives of the Secretary of State~~
6 ~~shall have their software source code for the operating system, vote recording, and vote~~
7 ~~counting processes filed with the Secretary of State and be open for public inspection.~~
8 ~~Such software shall be available during all business hours of each day that the office of the~~
9 ~~Secretary of State is open for business and available by download from the website of the~~
10 ~~Secretary of State. Such software source code shall be open prior to the examination of any~~
11 ~~system for approval and remain open for public inspection and review from the time the~~
12 ~~system is approved until such software is no longer used for vote recording or vote~~
13 ~~counting by any precinct.~~

14 (b) ~~The Secretary of State shall thereupon examine or reexamine such direct electronic~~
15 ~~recording voting system and shall make and file in his or her office a report, attested by his~~
16 ~~or her signature and the seal of his or her office, stating whether, in his or her opinion, the~~
17 ~~kind of system so examined can be safely and accurately used by electors at primaries and~~
18 ~~elections as provided in this chapter. If this report states that the system can be so used, the~~
19 ~~system shall be deemed approved, and systems of its kind may be adopted for use at~~
20 ~~primaries and elections as provided in this chapter. At any time, the Secretary of State may~~
21 ~~be required to reexamine a direct recording electronic voting system in accordance with the~~
22 ~~laws for voting machine examination as defined by Code Section 21-2-324. Any such~~
23 ~~reexamination of a direct recording electronic voting machine shall be conducted in~~
24 ~~accordance with the procedures of Code Section 21-2-324.~~

25 (c) ~~No kind of direct electronic recording voting system not so approved shall be used at~~
26 ~~any primary or election and if, upon the reexamination of any such system previously~~
27 ~~approved, it shall appear that the system so reexamined can no longer be safely or~~
28 ~~accurately used by electors at primaries or elections as provided in this chapter because of~~
29 ~~any problem concerning its ability to accurately record or tabulate votes, the approval of~~
30 ~~the same shall immediately be revoked by the Secretary of State, and no such system shall~~
31 ~~thereafter be purchased for use or be used in this state.~~

32 (d) ~~At least ten days prior to any primary or election, including special primaries, special~~
33 ~~elections, and referendum elections, the election superintendent shall verify and certify in~~
34 ~~writing to the Secretary of State that all voting will occur on equipment certified by the~~
35 ~~Secretary of State.~~

~~(e) Any vendor who completes a sale of a direct electronic voting system that has not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of \$100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have authority to impose such penalty upon a finding that such a sale has occurred.~~

~~(f) When a direct electronic recording voting system has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of such system, or of its kind.~~

~~(g) Neither the Secretary of State, nor any custodian, nor the governing authority of any county or municipality or a member of such authority nor any other person involved in the examination process shall have any pecuniary interest in any direct electronic recording voting system or in the manufacture or sale thereof."~~

SECTION 6.

Said chapter is further amended by adding new subsections (e) and (f) to Code Section 21-2-379.7, relating to preparation of polling places, to read as follows:

"(e) The superintendent shall ensure that an alternative means of voting is available for all electors in the event of voting machine malfunction, power failure, or any condition that may render the voting machines inoperable for a time period of more than 20 minutes during a primary, election, or runoff of either.

(f) The superintendent will provide at least one voting machine with voice prompt capability for ballot verification at each precinct to assist sight impaired electors."

SECTION 7.

Said chapter is further amended by striking subsection (b) of Code Section 21-2-379.10, relating to procedure for electors, and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) After the summary screen is displayed and the elector desires to make no further changes to his or her votes, the elector shall ~~be notified that he or she is about to cast the ballot. The elector shall then press the appropriate button on the unit or location on the screen to actually cast his or her ballot. After pressing the appropriate button on the unit or location on the screen to cast the ballot, the elector's vote shall be final and shall not be subsequently altered~~ choose from the summary screen to print his or her official paper ballot. When printing is complete, a verification screen shall be displayed prompting the elector to review the votes indicated on the printed ballot and giving the elector the option

1 to correct such votes or, alternatively, to cast his or her printed ballot as final and official.
 2 If the elector chooses to make changes to the official ballot, the voting system shall return
 3 to the summary screen and the printer shall mark the printed ballot with the word 'Void.'
 4 When the elector chooses to cast the official ballot, the printer shall mark the ballot with
 5 the words 'Approved by Voter' and that ballot shall be deposited in a ballot box prior to the
 6 elector leaving the polling place. The official ballots shall be secured in sealed, locked
 7 ballot boxes at all times in a manner according to the provisions of Part 2 of Article 11 of
 8 this chapter and other provisions of law for handling paper ballots. Such ballot boxes shall
 9 not be opened nor shall such ballots be counted until the poll closes."

10 SECTION 8.

11 Said chapter is further amended by striking Code Section 21-2-379.11, relating to procedure
 12 for tabulation of vote, and inserting in lieu thereof a new Code Section 21-2-379.11 to read
 13 as follows:

14 "21-2-379.11.

15 (a) ~~In primaries, and elections, and runoffs, in which the permanent paper records~~
 16 ~~produced by the direct recording electronic (DRE) voting equipment is used, the ballots~~
 17 ~~shall be counted at the precinct or tabulating center under the direction of the~~
 18 ~~superintendent poll manager immediately after the polls close. All persons who perform~~
 19 ~~any duties at the tabulating center shall be deputized by the superintendent and only persons~~
 20 ~~so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of~~
 21 ~~the count or be permitted to be in the immediate area designated for officers deputized to~~
 22 ~~conduct the count~~ The poll manager shall ensure that the total of all votes cast on all
 23 permanent paper records at the precinct is delivered to, and recorded correctly, at the
 24 tabulation center.

25 (b) ~~All proceedings at the tabulating center and precincts shall be open to the view of the~~
 26 ~~public, but no person except one employed and designated for the purpose by the~~
 27 ~~superintendent or the superintendent's authorized deputy shall touch any ballot, any DRE~~
 28 ~~unit, or the tabulating equipment~~ The permanent paper records shall be placed in a
 29 container that shall be transported to the tabulating center with the other election materials.
 30 The manager shall cause to be completed and signed a ballot recap form, in sufficient
 31 counterparts, showing the number of valid ballots, the number of spoiled and invalid
 32 ballots, the number of provisional ballots, the number of unused provisional ballots, and
 33 any other unused ballots. The manager shall cause to be placed in a ballot supply container
 34 one copy of the recap form and any unused, defective, spoiled, and invalid ballots, each
 35 enclosed in an envelope. The manager shall collect the memory card, tapes, and any other

DRE items for each voting machine and enclose them in the container according to the procedures established by the Secretary of State. The manager shall then seal and initial the container so that it cannot be opened without breaking the seal.

(c) ~~After the polls have closed and all voting in the precinct has ceased, the poll manager shall shut down the DRE units and extract the election results from each unit as follows:~~

~~(1) The manager shall obtain the results tape from each DRE unit and verify that the number of ballots cast as recorded on the tape matches the public count number as displayed on the DRE unit;~~

~~(2) If a system is established by the Secretary of State, the poll manager shall first transmit the election results extracted from each DRE unit in each precinct via modem to the central tabulating center of the county; and~~

~~(3) The manager shall then extract the memory card from each DRE unit~~ The sealed container shall be transported to the tabulating center with the other election materials.

The manager and one poll worker shall deliver the container to the tabulating center for the county or municipality and shall receive a receipt for such container. Copies of the recap forms, unused ballots, records, and other materials shall be returned to the designated location and retained as provided by law. The container with the permanent paper records of the precinct shall be kept unopened in a secure location by the election superintendent and shall be transferred to the appropriate officer with the other election records in accordance with Code Section 21-2-500.

~~(d) Upon completion of shutting down each DRE unit and extracting the election results, the manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:~~

~~(1) The number of valid ballots;~~

~~(2) The number of spoiled and invalid ballots;~~

~~(3) The number of provisional ballots; and~~

~~(4) The number of unused provisional ballots and any other unused ballots.~~

~~The manager shall cause to be placed in the ballot supply container one copy of the recap form and any unused, defective, spoiled, and invalid ballots, each enclosed in an envelope~~

The poll manager or superintendent shall deputize all persons who perform any duties at the precinct. The superintendent shall deputize all persons who perform any duties at the tabulating center. Only persons so deputized shall touch any ballot, other container content, or tabulating equipment.

(e) ~~The manager shall collect and retain the zero tape and the results tape for each DRE unit and place such tapes with the memory card for each unit and enclose all such items for all of the DRE units used in the precinct in one envelope which shall be sealed and~~

initiated by the manager so that it cannot be opened without breaking the seal The precinct ballot count and all tabulating center operations shall be conducted in full view of the public, which can include representatives of political parties, journalists, and individuals with audio and video recording equipment running continuously.

(f) ~~The manager and one poll worker shall then deliver the envelope to the tabulating center for the county or municipality or to such other place designated by the superintendent and shall receive a receipt therefor. The copies of the recap forms, unused ballots, records, and other materials shall be returned to the designated location and retained as provided by law~~ If the Secretary of State has established a system for transmitting the election results, the poll manager shall transmit the election results from the permanent paper records to the tabulating center. The tabulating center shall make public the totals from each precinct immediately upon receiving them from the precinct and not later than the time that they are included in the tabulation center totals. The superintendent shall ensure that the total of all votes received at the tabulation center for each candidate or ballot question is accumulated accurately and recorded correctly for certification in official state-wide totals.

~~(g) Upon receipt of the sealed envelope containing the zero tapes, results tapes, and memory cards, the election superintendent shall verify the signatures on the envelope. Once verified, the superintendent shall break the seal of the envelope and remove its contents. The superintendent shall then download the results stored on the memory card from each DRE unit into the election management system located at the central tabulation point of the county in order to obtain election results for certification."~~

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.